

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY



(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

REC'D 10 NOV 2005

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Applicant's or agent's file reference REP07273WO	FOR FURTHER ACTION		See Form PCT/IPEA/416
International application No. PCT/GB2004/003289	International filing date (day/month/year) 29.07.2004	Priority date (day/month/year) 30.07.2003	
International Patent Classification (IPC) or national classification and IPC A61L2/16, A61L9/013, C11D3/38, C11D3/00, C11D3/20			
Applicant BIOTAL LIMITED et al.			
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 7 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> sent to the applicant and to the International Bureau) a total of sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>			
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input checked="" type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input checked="" type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input checked="" type="checkbox"/> Box No. VIII Certain observations on the international application</p>			
Date of submission of the demand 16.03.2005		Date of completion of this report 08.11.2005	
Name and mailing address of the International preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer Luethe, H Telephone No. +49 89 2399-7519 	

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Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

Description, Pages

1-17 as originally filed

Claims, Numbers

1-28 as originally filed

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

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Box No. IV Lack of unity of invention

1. ☐ In response to the invitation to restrict or pay additional fees, the applicant has:
- ☐ restricted the claims.
 - ☐ paid additional fees.
 - ☐ paid additional fees under protest.
 - ☐ neither restricted nor paid additional fees.
2. ☒ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is
- ☐ complied with.
 - ☒ not complied with for the following reasons:
see separate sheet
4. Consequently, this report has been established in respect of the following parts of the international application:
- ☒ all parts.
 - ☐ the parts relating to claims Nos. .

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	2-7, 14-20, 22-28
	No: Claims	1, 8-13, 21
Inventive step (IS)	Yes: Claims	
	No: Claims	1-28
Industrial applicability (IA)	Yes: Claims	1-28
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

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Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

Re Item IV

Lack of unity of invention

Since the subject-matter of independent claim 1 (and that of independent claim 21) is not novel (see point 4 below), there is (obviously) no technical relationship between claims 1 and the other independent claims involving one or more of the same or corresponding technical feature and, hence, said inventions are not so linked as to form a single inventive concept under Rule 13.1 PCT.

Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

- 1 The following documents are referred to in this communication:
D1 : US 5 403 587 A (EASTMAN CODAK COMPANY) 4 April 1995;
D2 : US 6 103 683 A (THE PROCTER & GAMBLE CO.) 15 August 2000;
D3 : EP 0 870 507 A (FARMO-NAT LTD.) 14 October 1998.
- 2 The arguments of the Applicant as filed in said letter have been taken into consideration.
However the authorized officer holds the view that certain major objections still pertain as set out herein below.
- 3 The applicant's attention is respectfully drawn to the following:
The scope of product claim 1 cannot be limited by method features such as "for disinfecting a space", which in any case refers to an intention rather than to an actual process step. From any "vapour-producing product", i.e. any composition comprising essential oils, vapours will indeed be emitted into "a space", such as the air surrounding said product.
Presently the scope of none of present claims 1 to 28 is limited by the concentration of the essential oils called for. It is, hence, obvious that either
 - a) any concentration will have the desired disinfecting effect or
 - b) a minimal concentration is required in order to solve the technical problem posed

(cf. the description, page 3, lines 14-16; see point VIII below).

- 4 For the reasons outlined under point 3 above the objections detailed in the Written Opinion under point V are maintained in full:

The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 1, 8-13 and 21 is not new in the sense of Article 33(2) PCT.

- 4.1 Document D1 discloses (for citations see the International Search Report) a vapour producing composition comprising essential oils together with volatile solvents, such as ethanol, isopropanol etc., and "non-volatile" solvents, such as water and glycols absorbed on a carrier:

"The compositions can be packaged in conventional, ready-to-use dispensing systems. Thus they can be packaged in aerosol form in conventional aerosol containers or in liquid form in trigger pump spray bottles and squeeze bottles or pump spray bottles to produce an aerosol using a pump mechanism to build the necessary pressure to produce the aerosol. The compositions can also be impregnated into towelettes which can then be placed into contact with the hard surface to be treated. These towelettes can be packaged individually or in bulk form for individual dispensing" (column 5, lines 44-54).

It is clear that the composition of D1 is suitable for disinfecting a space.

- 4.2 The subject-matter of claims 2-7, 14-20 and 22-28 does not seem to embrace an inventive teaching.
- 4.3 The documents D2 and D3 (for citations see the International Search Report) form, independently from D1 and each other a novelty for most of the claimed subject-matter.
- In fact any incense stick comprising an essential oil would, when burnt, form a novelty-bar for the subject-matter of present claim 1.

Re Item VII

Certain defects in the international application

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- 5 Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the documents D1-D3 is not mentioned in the description, nor is this document identified therein.

Re Item VIII

Certain observations on the international application

- 6 The application does not meet the requirements of Article 6 PCT, because claims 1, 21, 23, 27 and 28 are not clear.

With reference to point 3, b) above the applicant's attention is drawn to the following: Presently said claims 1 cover subject-matter, i.e. compositions, which do not form a solution to the problem to be solved and, thus, it would appear that said claims do not contain all features essential to the invention as required by Article 6 taken in combination with Rule 6.3 a) b) I), ii) PTC.